

INDIAN FINANCING ACT AMENDMENTS OF 2002

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 2017

TO AMEND THE INDIAN FINANCING ACT OF 1974 TO IMPROVE THE EFFECTIVENESS OF THE INDIAN LOAN GUARANTEE AND INSURANCE PROGRAM

APRIL 24, 2002
WASHINGTON, DC



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INDIAN FINANCING ACT AMENDMENTS OF 2002

WEDNESDAY, APRIL 24, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (vice chairman of the committee) presiding.

Present: Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL. Good morning and welcome to the committee's hearing on S. 2017, the Indian Financing Act Amendments of 2002, legislation I introduced on March 14 of this year, joined by our chairman, Senator Inouye.

[Text of S. 2017 follows:]

107TH CONGRESS
2D SESSION

S. 2017

To amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2002

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Financing Act
5 Amendments of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the Indian Financing Act of 1974 (25
9 U.S.C. 1451 et seq.) was intended to provide Native
10 American borrowers with access to commercial cap-

1 ital sources that, but for that Act, would not be
2 available through loans guaranteed by the Secretary
3 of the Interior;

4 (2) although the Secretary of the Interior has
5 made loan guarantees available, acceptance of loan
6 guarantees by lenders to benefit Native American
7 business borrowers has been limited;

8 (3) 27 years after enactment of the Act, the
9 promotion and development of Native American-
10 owned business remains an essential foundation for
11 growth of economic and social stability of Native
12 Americans;

13 (4) acceptance by lenders of the loan guaran-
14 tees may be limited by liquidity and other capital
15 market-driven concerns; and

16 (5) it is in the best interest of the guaranteed
17 loan program to—

18 (A) encourage the orderly development and
19 expansion of a secondary market for loans
20 guaranteed by the Secretary; and

21 (B) expand the number of lenders originat-
22 ing loans under that Act.

23 (b) PURPOSES.—The purposes of this Act are—

1 (1) to stimulate the use by lenders of secondary
2 market investors for loans guaranteed by the Sec-
3 retary of the Interior;

4 (2) to preserve the authority of the Secretary to
5 administer the program and regulate lenders;

6 (3) to clarify that a good faith investor in loans
7 guaranteed by the Secretary will receive appropriate
8 payments;

9 (4) to provide for the appointment by the Sec-
10 retary of a qualified fiscal transfer agent to admin-
11 ister a system for the orderly transfer of the loans;

12 (5) to authorize the Secretary to—

13 (A) promulgate regulations to encourage
14 and expand a secondary market program for
15 loans guaranteed by the Secretary; and

16 (B) allow the pooling of the loans as the
17 secondary market develops; and

18 (6) to authorize the Secretary to establish a
19 schedule for assessing lenders and investors for the
20 necessary costs of the fiscal transfer agent and sys-
21 tem.

22 **SEC. 3. LOAN GUARANTEES.**

23 Section 205 of the Indian Financing Act of 1974 (25
24 U.S.C. 1485) is amended—

1 (1) by inserting “(a) IN GENERAL.—” before
2 “Any loan”; and

3 (2) by adding at the end the following:

4 “(b) TRANSFER OF LOANS AND UNGUARANTEED
5 PORTIONS OF LOANS.—

6 “(1) TRANSFER.—

7 “(A) IN GENERAL.—The lender of a loan
8 guaranteed under this title may transfer to any
9 person—

10 “(i) all of the rights and obligations of
11 the lender under the loan, or in an
12 unguaranteed portion of the loan; and

13 “(ii) the security given for the loan or
14 unguaranteed portion.

15 “(B) REGULATIONS.—A transfer under
16 subparagraph (A) shall be consistent with such
17 regulations as the Secretary shall promulgate
18 under subsection (g).

19 “(C) NOTICE.—A lender that completes a
20 transfer under subparagraph (A) shall give no-
21 tice of the transfer to the Secretary (or a des-
22 ignee of the Secretary).

23 “(2) EFFECT OF TRANSFER.—On any transfer
24 under this subsection, the transferee shall—

1 “(A) be considered to be the lender under
2 this title;

3 “(B) become the secured party of record;
4 and

5 “(C) be responsible for—

6 “(i) performing the duties of the lender;
7 and

8 “(ii) servicing the loan or portion of
9 the loan, as appropriate, in accordance
10 with the terms of guarantee of the Secretary
11 of the loan or portion of the loan.

12 “(c) TRANSFER OF GUARANTEED PORTIONS OF
13 LOANS.—

14 “(1) TRANSFER.—

15 “(A) IN GENERAL.—The lender of a loan
16 guaranteed under this title, and any subsequent
17 transferee of all or part of the guaranteed portion
18 of the loan, may transfer to any person—

19 “(i) all or part of the guaranteed portion
20 of the loan; and

21 “(ii) the security given for the guaranteed
22 portion transferred.

23 “(B) REGULATIONS.—A transfer under
24 subparagraph (A) shall be consistent with such

1 regulations as the Secretary shall promulgate
2 under subsection (g).

3 “(C) NOTICE.—A lender that completes a
4 transfer under subparagraph (A) shall give no-
5 tice of the transfer to the Secretary (or a des-
6 ignee of the Secretary).

7 “(D) ACKNOWLEDGEMENT.—On receipt of
8 notice of a transfer under subparagraph (C),
9 the Secretary (or a designee of the Secretary)
10 shall issue to the transferee the acknowledge-
11 ment of the Secretary of—

12 “(i) the transfer; and

13 “(ii) the interest of the transferee in
14 the guaranteed portion of a loan that was
15 transferred.

16 “(2) EFFECT.—Notwithstanding any other pro-
17 vision of law, with respect to any transfer under this
18 subsection, the lender shall—

19 “(A) remain obligated under the guarantee
20 agreement between the lender and the Sec-
21 retary;

22 “(B) continue to be responsible for servie-
23 ing the loan in a manner consistent with the
24 guarantee agreement; and

25 “(C) remain the secured creditor of record.

1 “(d) FULL FAITH AND CREDIT.—

2 “(1) IN GENERAL.—The full faith and credit of
3 the United States is pledged to the payment of all
4 loan guarantees made under this title.

5 “(2) VALIDITY.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the validity of a guarantee
8 of a loan under this title shall be incontestable
9 if the guarantee is held by a transferee of a
10 guaranteed obligation whose interest in a guar-
11 anteed loan has been acknowledged by the Sec-
12 retary (or a designee of the Secretary) under
13 subsection (c)(1)(D).

14 “(B) FRAUD OR MISREPRESENTATION.—
15 Subparagraph (A) shall not apply in a case in
16 which the Secretary determines that a trans-
17 feree of a loan or portion of a loan transferred
18 under this section has actual knowledge of
19 fraud or misrepresentation, or participates in or
20 condones fraud or misrepresentation, in connec-
21 tion with the loan.

22 “(e) DAMAGES.—The Secretary may recover from a
23 lender any damages suffered by the Secretary as a result
24 of a material breach of an obligation of the lender under
25 the guarantee of the loan.

1 “(f) FEE.—The Secretary may collect a fee for any
2 loan or guaranteed portion of a loan transferred in accord-
3 ance with subsection (b) or (c).

4 “(g) REGULATIONS.—Not later than 180 days after
5 the date of enactment of this subsection, the Secretary
6 shall promulgate such regulations as are necessary to fa-
7 cilitate, administer, and promote the transfer of loans and
8 guaranteed portions of loans under this section.

9 “(h) CENTRAL REGISTRATION.—On promulgation of
10 final regulations under subsection (g), the Secretary
11 shall—

12 “(1) provide for the central registration of all
13 loans and portions of loans transferred under this
14 section; and

15 “(2) contract with a fiscal transfer agent—

16 “(A) to act as a designee of the Secretary;
17 and

18 “(B) on behalf of the Secretary—

19 “(i) to carry out the central registra-
20 tion and paying agent functions; and

21 “(ii) to issue acknowledgements of the
22 Secretary under subsection (c)(1)(D).

23 “(i) POOLING.—

1 “(1) IN GENERAL.—Nothing in this title pro-
2 hibits the pooling of whole loans, or portions of
3 loans, transferred under this section.

4 “(2) REGULATIONS.—The Secretary may pro-
5 mulgate regulations to effect orderly and efficient
6 pooling procedures under this title.”.

○

Senator CAMPBELL. I would like to extend a special welcome to our colleague and friend from the House side, Congresswoman Bono from California's 44th District. Congresswoman Bono has introduced H.R. 3407, the Indian Finance Act Reform Amendment, the House counterpart to the legislation that is before us today.

Mary, thank you for appearing. I understand you have a 10:15 a.m., meeting a very tight commitment, so I am going to forego my opening statement or finish it after you have made your presentation. If any other members show up while you are making it, I will ask them to do the same.

With that, if you would like to proceed?

**STATEMENT OF HON. MARY BONO, U.S. REPRESENTATIVE
FROM CALIFORNIA**

Ms. BONO. Thank you, Senator, for allowing me to go quickly. I do have something on the floor first thing, so I will run from here to there.

I really want to thank you for the opportunity to testify before your committee on S. 2017, the Indian Financing Act Amendments of 2002, which is the Senate counterpart to my House legislation, H.R. 3407. Mr. Campbell, your leadership on the Senate legislation is to be applauded as its role in encouraging economic development on Native American lands will be crucial.

With the enactment of the Indian Financing Act of 1974, Congress instituted the Indian Loan Guarantee and Insurance Fund. In turn, this law allowed the Secretary of the Interior to ensure and guarantee the repayment of small business loans to qualified Native American borrowers. These loans are unique in the Native American community in that they are issued by private lenders and provide not only financial assistance to tribes who may otherwise not be able to secure financing, but also the incentive for Native American-owned small businesses to invest substantially in their future.

Being a former small business owner myself, I am aware of the many financial challenges a new enterprise faces in its first few years. Securing vital loans to finance a new business helps all individuals to realize their dreams of economic opportunity and independence. I also understand, however, that we must work to minimize Government small business intrusion, both on the regulatory level and on the fiscal level. S. 2017 serves this need by providing a clear uniformity in lending that does not currently exist. Further, this amendment will come at no cost to the Federal Government.

This legislation provides a strong path toward expansion of tribal lending as can be seen in the evolution of a similar loan guarantee program within the Small Business Administration. In particular, the passage of this legislation will help to encourage a stronger relationship between private lenders and the communities they assist. One of the important aspects of the SBA Revolving Loan Program is the Federal Government's guarantee of full repayment of the loan should the loan default. Currently under the BIA's existing Indian Loan Guarantee and Insurance Fund, a loan does not have this Federal Government guarantee, which is a disincentive for lenders to work with Native Americans looking to start their own businesses.

S. 2017 will provide this notion of a guarantee of full repayment of the loans if a loan defaults. Further, smaller banks such as Palm Desert National Bank in California's 44th Congressional District, which I represent, are not easily accessible for financing tribal economies because of the existing law. S. 2017 will allow for liquidity in the loan process that provide smaller banks and investors the opportunity to rid themselves of the burden that a 30-year loan can have on the capital that they have on hand.

Further, currently the secondary market investors are not offered uniformity in the way that they are able to pool their loans and then sell pieces of this pool. This tends to spread and minimize the risk of default among a number of investors. Thus, we are able to help both smaller banking institutions, as well as those tribes in lands in more rural areas of our country.

I am encouraged by the prospect of employing the principles of entrepreneurship which the Indian Financing Act Amendments of 2002 offers to potential and current Native American small business owners. Only through the mutually beneficial relationship between the Interior Department and the private lending community and tribal entrepreneurs can we offer Native Americans the financial tools to help their tribal economies expand and flourish.

Serious consideration and passage of legislation such as S. 2017 and H.R. 3407 in the House will further encourage the growth of small businesses that empowers tribes and excites development and substantive growth. It is my hope that this committee will recognize the importance of this legislation being another key to allowing Native Americans across the country realize their potential to become increasingly self-sufficient and economically vibrant communities.

Thank you again, Senator Campbell, for your leadership on this bill and for allowing me to testify today on the Indian Financing Act Amendments of 2002. Thank you.

Senator CAMPBELL. Thank you for appearing, Mary. It sounds like you are certainly doing your homework. Financing was never my long suit, although I was on the Banking Committee for a few years here in the Senate. But certainly it is very well needed, and I appreciate you appearing.

If you need to run, why go ahead. I will finish my statement and we will go ahead and take testimony, but I look forward to trying to move this bill through.

Ms. BONO. As do I, Senator. Thank you very much. Thank you all.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL. In 1974, 4 years after President Nixon issued his now-famous special message to Congress on Indian Affairs, Congress passed the Indian Financing Act, which in turn created the Indian Loan Guarantee and Insurance Fund to provide Native Americans access to private money sources that would otherwise be unavailable.

Since Congress enacted this law, the Secretary of the Interior is authorized to ensure and guarantee the repayment of small busi-

ness loans to qualified Native American borrowers issued by private banks and lenders. Oftentimes, these loans represent the first relationship tribal borrowers and the private commercial banks have ever had with each other. Oftentimes, these relationships are critical in helping to bring valuable economic development dollars to reservation lands.

Although the need of capital in Indian communities far outstrips the amount, the Indian Loan Guarantee and Insurance Program has grown over the past 28 years to where it is now guaranteeing something like \$75 million in loans annually to Native Americans. The Mortgage Finance News has recently reported that for housing finance alone, there is a \$2.7 billion pent-up demand in Native communities. The Native American Lending Study published in November 2001 by the Community Development Financial Institutions shows that there are great unmet needs in Native communities for capital and liquidity. Those unmet needs are holding back the growth of Indian economies.

We often hear from Indian tribes, as well as lenders from across the country, who have told us that a major problem restraining their participation in the BIA's loan program is the lending institution's lack of liquidity once the loan is made. These small business loans tend to stay on the books for a long time. They are paid down, but not as rapidly refinanced as conventional loans. Therefore, a bank has its capital tied up in these loans and cannot easily turn around and use that capital again.

The Indian Financing Act Amendments of 2002 direct the Secretary of the Interior to take steps to encourage the creation of an efficient secondary market for Native American loans or loan guarantees made by the Department of the Interior.

We will go ahead and proceed with our witnesses. We will start with our second panel. That will be Les Minthorn, the treasurer of the Board of Trustees of Confederated Tribes of the Umatilla Reservation in Pendleton, OR, and Marcia Warren Edelman, economic development consultant for the National Congress of American Indians here in Washington, DC.

Thank you, and if you would like to go ahead and start, Les, please do.

STATEMENT OF LES MINTHORN, TREASURER OF THE BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Mr. MINTHORN. Thank you.

I have a prepared statement here, but I would just like to summarize.

Senator CAMPBELL. It will be included in the record.

Mr. MINTHORN. In 1969 in our community we had a firm here in Washington, DC called Ernst and Ernst that provided a study on some of the unmet needs and needs assessment of our reservation. In that study in 1969, it provided for a golf course, a hotel, and RV park, gas store and those kind of things in 1969. And you just mentioned the 1974 Indian Financing Act, and in 1975, the Indian Self-Determination Act came about. In 1994 on our reservation, IDRA was implemented in a small, modest way with a 100-machine facility. And in 1995, we were able, you know, 26 years

later, to develop a relationship with our trustee to access this loan guarantee program. And as a result of that, we were able to secure a relationship with a bank that for those 26 years, you know, nothing really happened on our reservation until we had the loan guarantee program from the Interior Department that provided us with a \$10-million loan guarantee.

With that in hand, we were able to go ahead and do the search for an institution that would deal with this. In that search, we found that very few banks would talk to us, let alone negotiate on our facilities that we needed financing for, until we had a relationship built with a bank out of New Mexico. That bank was probably the first one that we had our teacher relationship with a bank on how to do the processing, the negotiation on loans, and actual closing of those documents.

So we did have a learning curve there, but it took us a long time to develop that relationship with that banking institution because of our building blocks that we needed as a tribal government to develop that relationship, which has a lot to do with trust. If they do not understand you and do not understand the trust relationship, they tend to not want to do business, much less trust you when you present your needs assessment on a relationship for economic development.

So in those timeframes, those 26 years until we had this relationship develop, that really what it did for us at Umatilla in Eastern Oregon where we are located, is open doors for other institutions. Once we had one bank deal with this on a \$10 million loan guarantee, it provided then other opportunities for other institutions to follow that lead. So during those time frames, it was a very, I guess, cautious in the banking institutions to—a cautious mode on their part to deal with the Indian tribes.

Our success with those things that started in 1969, the RV park is there. We have 100-unit park. We have an 18-hole golf course. We have 100-unit hotel. We have a cultural center. We have probably the second-largest—we are the second-largest employer in Umatilla County. The State of Oregon is the number one employer in our county. The tribe is the second-highest. We have probably about 500 people employed in these resorts that I just referred to—the casino, the golf course, the RV park and the cultural institute. And so the 1969 plan that was developed for us took us that long to achieve some means of economic development.

As a result of that, we were able to move beyond that to the point where we refinanced all of those loans under that loan guarantee, with a bond issuance with another banking institution. So those loans ceased to exist with the loan guarantee attached to it in 1995, is when we created them. And then just recently we were able to, in 1999 with the bond issue, bring those to a close.

So it did help us when we had utilization of that loan guarantee, but without it we would not have what we have here today that I am bringing to this table, the success that we have had had a lot to do with the Indian Loan Guarantee Program under the Interior.

So for us, it is an opportunity to come here and express our support for this House and Senate bill that we have heard this morning, S. 2017 and, Senator Bono's testimony here on the House side.

We support that because we were examples of how that actually helped us move from a holding position to being a player in economics. Without economics, the sovereignty, the things that we need for expressing our needs for our tribal government, you know, they kind of go as well on a holding pattern for some things that you need to do for your health, education and needs assessment of your organization.

So I am here today to express our support for our organization and the Interior Department to move in that direction per your Senate bill here today, Mr. Campbell. Our attorney was involved with that timeframe, so if you have any specific questions, Dan Hester is here and he was an actual part of the negotiation team at that time when we worked with the Bank of New Mexico to put this thing together.

So I have a prepared written testimony, but most of our elders refuse to read from the written, and they tell you to speak from the heart, and that is what I hope I have done here today.

[Prepared statement of Mr. Minthorn appears in appendix.]

Senator CAMPBELL. Thank you. That is the way the committee feels, too, by the way. We appreciate your being here.

Ms. Edelman, why don't you go ahead.

STATEMENT OF MARCIA WARREN EDELMAN, ECONOMIC DEVELOPMENT CONSULTANT, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. EDELMAN. Good morning.

My name is Marcia Warren Edelman. I am pleased to represent the National Congress of American Indians here today.

I am going to go ahead and read from our testimony, just because I think it will give a comprehensive reflection of how NCAI feels.

I would like to thank you first of all for your invitation to present this testimony on this very important piece of legislation, the Indian Financing Act Amendment of 2002. I would also like to thank the committee and their staff for the hard work that they do on behalf of the tribes and Indian people of this Nation. We appreciate the particular attention that the committee has given to the need for sustainable economic development in Indian country. S. 2017 represents an important element in this effort.

As you well know, access to capital in Indian country is extremely limited, and this shortage of capital represents one of the primary barriers to comprehensive and lasting economic development in our communities. Despite these challenges, a growing number of Indian-run and/or tribally operated businesses in the United States has taken hold in recent years. Most of these Indian entrepreneurs and tribes must seek loans for the development of their businesses, as they do not have the financial means to finance a business themselves.

Despite an increasing demand for loans, the lending community in Indian country is not vibrant. Sources of capital for development remain extremely limited as lenders, already tentative in their approach to Indian country due to jurisdictional complexities and in many cases a simple fear of the unknown, shy away from sinking large amounts of money into projects that will take a number of

years for repayment. Such long-term loans tie up capital for lenders, limiting their ability to make loans to other applicants.

Large loans for complex proposals, however important they may be to the enhancement of infrastructure and meaningful economic opportunity in Indian country, are extremely difficult to procure. I commend the committee and its leadership for recognizing this problem and introducing legislation designed to draw lenders into the economies of Indian country. This legislation offers an excellent opportunity to boost tribes and their members' ability to realize self-sufficiency by addressing the problems of liquidity in the current market of guaranteed loans to Indian borrowers.

As you have found, the vast majority of lenders have not readily accepted the existing loan guarantees made available through the Secretary of Interior, likely because lenders are committed to having their capital tied up until repayment begins. Outside of Indian country, loan markets operate differently, and arguably more productively. Agencies like Freddie Mac and Fannie Mae, as secondary lenders, expedite the capital refill process by purchasing loans from the primary lenders. This secondary market does not affect the borrower, and allows a quick turnaround for the primary lender. In essence, the secondary lenders fronts the value of the loan and gives the primary lender more funds for outlay in other loans.

We believe that creation of a similar secondary market for Indian country lending is a promising means to increase opportunities for Indian businesses to acquire capital, thereby strengthening the overall economic fabric of Indian communities. The key foundation of a vibrant economy is small business, particularly in the small rural communities that are generally representative of Indian country. By making the loans that are currently guaranteed by the Department of the Interior available for transfer, this legislation stands to greatly increase the flow of funds into new business in Indian communities and jump-start increasing economic self-sufficiency in Indian country.

Secondary markets have proven to be an extremely successful means of stimulating lending in the context where they currently operate. For the last 17 years, the Small Business Administration has operated a secondary loan market for its loans and the results have been quite positive. The program provides lenders who might otherwise have been unable to participate in the loan market a simple process to follow for the transfer of loans. Increased numbers of lenders in the markets have in turn resulted in an increase in the amount of money available to those businesses seeking loans.

Using the SBA program as a model, this legislation would open up the Department of the Interior guaranteed loans to the same process. We know that the market can work to benefit Indian country when the barriers that plague our economies are removed. This process, under the supervision and administration of a fiscal transfer agent, is a relatively simple and straightforward way to address one of the barriers we face.

Additionally, the program operates at a very low cost to the Government, with fees for the transfer paid by the lenders who execute the transfer. Best of all, this program has only positive effects on the individuals seeking the loan. They have no need to worry about

the transfer process and benefit by the availability of more capital. The legislation as currently drafted contains provisions for the Secretary of the Interior to promulgate regulations necessary to set up the secondary loan market, to contract with a fiscal transfer agent to carry out the registration and paying agent functions, and to issue acknowledgements of loan transfers. In implementing this requirement, we urge the Secretary to work very closely with tribal government representatives to develop final regulations to set up the market.

We also urge the Secretary to contract with a fiscal agent familiar with transactions in Indian Country. We are always available to work with this committee and the Secretary to advise this process and contribute what we can to our mutual goal of helping Indian communities and individuals to thrive.

The National Congress of American Indians supports S. 2017 as an important means to inject capital into the economies of our tribes, thereby strengthening Indian economies and Indian communities. By approving this bill, the Senators on this committee will make another important step on the path to meaningful economic development for Indian country, with little impact on either Government spending or the bureaucratic process.

Thank you for this opportunity to present testimony on behalf of NCAI and I welcome any questions you may have.

[Prepared statement of Ms. Edelman appears in appendix.]

Senator CAMPBELL. Thank you.

Mr. Minthorn, your tribe, the Confederated Tribes of the Umatilla Reservation, has come a long way since 1994, when you were largely dependent on Government grants. Did you have to change any tribal policies as you moved forward to become one of the largest employers in the county now?

Mr. MINTHORN. All of our rules and regs and procedures were kind of foreign to us as an Indian nation up through our development. But as we became more familiar with the workings of business, we have changed a lot of things. Primarily, when we were searching for self-governance, we were a Public Law 280-tribe, and with our relationship with the State of Oregon we were able to have an executive order transfer that criminal jurisdiction back to the reservation, which created tribal courts, tribal police, juveniles. So we needed codes and that was the basis for all of the other code development and procedures for handling our grants and contracts to make us more accountable.

And so as a result of our development into a small part of the responsibilities as a sovereign, we developed rules and regulations for our tribal courts, our health program, our education. And so we have developed many kinds of rules and regulations depending on the issue. So if you come to our reservation and work with one of our commissions or committees, we have policies and regulations regarding all of those. For finance, yes, we have what we call fiscal management policies that regulate how we are able to move cash through our system and how it is disbursed and accounted for. We have audits that cover all of the areas.

So yes, a lot of things were changed policy-wise for our people. I am one generation removed from my parents, who are traditional people. And so this is a new thing for this generation to develop

rules, regulations and procedures. We have them for almost every program that we contract for, and implement on behalf of our people.

Senator CAMPBELL. Well, I personally happen to think that you can develop standards to be able to move your tribe ahead in the 21st century and still be a traditional person at the same time.

When you first were out trying to get capital from banks, what were some of the concerns they expressed when they turned you down?

Mr. MINTHORN. Primarily, the relationship dealing with our land, because in the traditional sense, you need collateral and most of the lands that we had were in trust. And the relationship that we had up until that point in time as a community was farm community. Most of our land is farmed. It has wheat crops on it—wheat and barley, peas. As far as the revenue for the tribal government by itself, we had very little revenue. The land was primarily owned by individual allotment owners. So the bulk of the wealth, the bulk of the ownership on our reservation was owned by individual allottees, not by tribal government.

So from a collateral standpoint, we had no collateral. We had no business experience. We had not war chest from any settlements. We had no revenue to support our loan applications with these banks. So to make a long story short, no collateral, no loan.

Senator CAMPBELL. Is farming still an important part of the economy of your reservation?

Mr. MINTHORN. It is still the primary support source for I would say heirs of our original owners. Most of our ownership now is fractionalized because of the lack of wills being developed by elders because they did not want to use the paper. And so, yes, but the income is very small to the heirs who have inherited those parcels of land that were originally large.

Senator CAMPBELL. You mentioned you have a hotel, a golf course, some recreational facilities. The proceeds—your real viable business now—and the profits you have made, what are your primary objectives with them? Do you put them into education or per capita them?

Mr. MINTHORN. We have 15 percent of our revenues from the gaming facility are dividends. The remaining 85 percent support the essential governmental services as we define them, to support tribal government and its programs. And that is basically where all the revenue goes. It goes 85 percent of the net from the casino goes back into tribal programs—our health, our senior citizens, our education, our burial fund, youth, our tribal police. All of those things go back into what we are now learning these new terms—essential governmental services.

Senator CAMPBELL. I do not know the enrollment of your tribe.

Mr. MINTHORN. 2,300 right now.

Senator CAMPBELL. Well, it sounds like you have done really very well. If you were to offer advice of what you have gone through to other tribes, it just sounds to me like what you have done could be a model for a lot of other struggling tribes. What would you tell them in their first-ever attempts to raise capital?

Mr. MINTHORN. Find a way to secure—you have to understand when we deal with a non-Indian population that there is a lot of

mistrust from the old days. I am sure you know that. But the people were very conscious themselves about having a relationship with people who would secure or want you to mortgage your land in exchange for money. They already went through that and lost a lot of our reservations through that means. And so as we learn from those hard experiences, my generation from my parents, we had to have a system that was going to deal with funds traveling through inputs and outputs and have rules on how the inputs and outputs were treated once the money was in transition.

I think we have developed our internal system to do that. Fiscal management policies on our investments, we have, what do you call them, investment policy statements so that when we do have someone take care of our money for us that you have an investment policy out there that defines how much risk you are able to have and how much you can earn, so that you know that your money is always going to be there at the end of that investment period. But that all comes from the hard lessons of losing your resources. And so you have to look at yourself and know yourself because the banks are not our enemy. But if you fail to manage your funds in a manner that is going to repay your debts, you will lose and the banks will be your enemy. But the relationship that you have, you have to protect yourself in managing your funds, and that comes with the rules and regulations and procedures that we have for our financial dealings.

If you can keep your house in order with your own money, you take care of your own money and you follow those rules and regulations and procedures for yourself and your own hard dollars, when you take the 2,300 members' money, you should follow those same rules, regulations and procedures because now you are risking your whole nation's assets. You certainly want to be very careful when you put any of that up.

Senator CAMPBELL. Well, good news travels and then dies somewhere in the future, but the bad news seems to have a life of its own. I think that some industries and maybe some institutions, too, have had something bad happen to them in working with tribes. Unfortunately, that taints the thing for all those other tribes. I know in some areas, I am just thinking of at Crow Reservation and at Shiprock, too, in New Mexico where industry has come in and built some facilities and then because of unstable government, ended up losing the facility. I think banks see things like that and of course then they worry about future lending. So it takes a while to establish a good working trust, as you mentioned, relationship with lending institutions, too. Apparently, you have done it very well.

Thank you for your testimony.

Ms. Edelman, I think NCAI is very fortunate to have you working with them because of your experience at the Commerce Department.

Ms. EDELMAN. Thank you.

Senator CAMPBELL. Let me just ask you generally, how can we unlock the mystery of the capital markets to Indian people? Les mentioned traditional people which, you know, traditional people tend not to be well-steeped in the issues of financing. How do we make that connection or build that bridge?

Ms. EDELMAN. I believe we should build the bridge by first identifying these issues as tools, not threats to sovereignty, not threats to traditional way of life, but actual tools to enable our tribal communities to achieve sustainability and the ability to preserve their culture. Doing that through education, and through information, such as the report the CDFI fund released recently on this issue, can enable those communities to get the information they need in order to start getting comfortable with what those particular issues are, and then applying them to their particular situation.

I fully support Mr. Minthorn's comments on an investment policy and having those rules and regulations in place—something that is understandable, foreseeable, and easily adhered to when those different issues come up on how to invest money or how to even address the issue of what “finance” means to a community, ranging from the individual to tribal enterprise level. So I think it is all about really taking these issues out of the context of, you know, “is this traditional or not traditional”; “is it buying into the larger society”. It is not—it is really a skill and it is a tool to enable these communities to survive on their own terms and to flourish on their own terms.

Senator CAMPBELL. One of the complaints we get at the committee is very often we will pass legislation that is intended to help Indian people. Somewhere between the time we pass it and the time it is implemented, it gets lost. And then we hear 2 years later that nobody told the tribes that they could avail themselves to this new act that is in place. It seems to me that NCAI can play a very, very important role because you do have a national convention and a mid-term convention, too. As it is now, do you have a role? Do you have a goal to try to increase the awareness of tribes to their opportunities through banking institutions or lending institutions?

Ms. EDELMAN. Yes; very much so. In fact, it is interesting that you bring this up right now. Our mid-year session is focused solely on economic development. We have four tracks that we are addressing, one of which is finance. Another is marketing, business/economic development and the third is capacity building. What we are aiming to do, instead of having panel discussions where people basically will discuss the issues, we are aiming to provide training sessions which will give the attendees, skills and strategies that they can take back home with them to implement as they wish.

NCAI sees its role right now really as a bridge between the different Indian business organizations, the Native-owned banking industry, and also mainstream banking and financial institutions. We aim to be a conduit of information and really a facilitator at this moment. We find it very important that this information get to tribes, but not just in paper form, not just in a form of talking heads, but something solid, something productive that could actually be implemented on the ground.

Senator CAMPBELL. I commend you for that. The focus is obviously on the tribes, but it is a two-way street. You have got to educate the lending institutions, too, about opportunities in Indian country. Does NCAI do anything along that line?

Ms. EDELMAN. Yes; we will be developing policy papers that we will not only be sharing with Congress and the Administration, but also with private industry on what exactly you should expect in In-

dian country, what are the issues of importance are. From those, we will probably be developing information that will enable businesses and other institutions to deal better with tribes, not just in terms of the cultural awareness, but also the statistics and the facts that they need to know to minimize the so-called, if you want to call it, political risk of doing business in Indian country.

Senator CAMPBELL. I know it is very complicated. I visited a couple of times, I just happened to go home where I am enrolled, when the tribal council was dealing with some people about investments. The investments that were presented were very high-yield investments, but the investments, at least part of them, flew in the face of some of the traditional beliefs of the elder people. I know that is a difficult thing to deal with when you are trying to get the best yield you can and make the most money you can for the tribe, and at the same time now do something that is going to upset the things that they have learned from childhood that they ought to be protecting and careful about. I commend you for trying to work on both sides of that.

One of the things that we have heard, too, is that lending institutions are worried about unstable Government, that as tribal councils change and directions change, sometimes the rug can be pulled out from under the lenders. Do you do anything at all to encourage good governance when you are doing these seminars?

Ms. EDELMAN. Yes; as a matter of fact, our mid-year session again is going to be held in conjunction with the Harvard Program. I am sure you familiar with that.

Senator CAMPBELL. Yes; a very successful program.

Ms. EDELMAN. Very successful. So we really want to come together with them as they go through their final process of selecting the awardees for this year, not only to increase awareness of this program for our member tribes, but also to give the potential awardees a chance to gain exposure. They are going to be going through their final process of presentations, and that will be open to the membership to come and listen to. So, in effect, we will be having case studies going on throughout our second day. I think that is, by example, it is just a better—

Senator CAMPBELL. Where is the convention?

Ms. EDELMAN. It is in Bismarck, ND.

Senator CAMPBELL. Bismarck, ND.

Ms. EDELMAN. Having those potential awardees there as examples, it is an excellent way for people to feel comfortable with the process.

Senator CAMPBELL. All right. I thank you both for appearing. Other members who are not in attendance, they may have some written questions they may submit to you.

Thank you very much for being here.

Ms. EDELMAN. Thank you.

Senator CAMPBELL. Our next panel will be just one person, Kevin McGuire, president, Palm Desert National Bank of Palm Desert, CA. It sounds to me you might have been invited by Congresswoman Bono.

Mr. MCGUIRE. That is correct.

Senator CAMPBELL. Very good. You can just proceed at your own speed, Mr. McGuire, and all your written testimony will be in-

cluded in the record. So if you would like to abbreviate or diverge from that, that is fine.

STATEMENT OF KEVIN MCGUIRE, PRESIDENT, PALM DESERT NATIONAL BANK

Mr. MCGUIRE. My name is Kevin McGuire. I am the chairman and chief executive officer of Palm Desert National Bank in Palm Desert, CA.

Palm Desert National Bank began making loans to Indian tribes and tribal entities in 1985. The projects with which we are currently involved are a tire recycling plant for the Cabazon Band of Mission Indians for \$7.5 million. Most recently, we were the lender for an \$18 million refinance and construction project for the Picuris Pueblo in New Mexico. We continue to actively seek opportunities to make loans of all sizes for economic enterprise and development in Indian country throughout the United States.

As an Indian country lender, we have learned that while many economic development efforts in Indian country can be sparked with relatively small amounts of capital, many tribal development efforts require capital in the form of cash and loans that exceed the lending limits and loan concentration limits to which small- and mid-sized community banks are subject. Our experiences as a community bank lead us to conclude that the creation of the secondary market in BIA guaranteed loans will increase opportunities for lending in Indian country, without additional costs to the parties and with no additional cost to the Federal Government. An institutionalized secondary market in BIA guaranteed loans will facilitate the sale to investors of BIA guaranteed loans, putting capital back into the originating bank that then can be loaned again.

Additionally, lenders will be able to originate more loans without violating laws and regulations that limit the amount banks may lend to a particular borrower, and that prohibit banks from having in their portfolios too many loans of a single type.

If only large banks invested in Indian country, lending limits and loan concentrations would be less of an issue. However, community banks—those most familiar with Native American neighbors—make many of the loans earmarked for tribal economic development. Therefore, the constraints imposed by banking law lending limits and loan concentration limits are significant problems—problems that can be resolved by the passage of S. 2017.

Since the current Indian Financing Act, BIA Guaranteed Loan Program permits lenders to transfer portions or all of BIA guaranteed loans they originate, why is creation of the secondary market necessary? There are two primary reasons. First, finding participants willing to purchase loans to tribes or tribal enterprises, whether or not they are guaranteed by BIA is very difficult and time consuming. This is because few lenders are familiar with the Indian Financing Act program or the benefits of lending in Indian country. As a result, closings are delayed and costs accelerate. We believe that the existence of an institutionalized secondary market will make selling tribal loans much easier.

Second, there is already a secondary market for commercial loans, for example, SBA and USDA loans. Investors are familiar with and are comfortable purchasing loans from the existing pro-

grams. However, as it now exists, the Indian Financing Act Guaranteed Loan Program is structured differently than other government guaranteed loan programs. The differences and lack of familiarity make investors unwilling to invest in BIA guaranteed loans.

The secondary market contemplated by S. 2017 is modeled after the existing SBA and USDA programs. The basic structure is the same. The risk to investors is the same. Hence, investors who have purchased loans from other government guaranteed programs will be likely also to purchase BIA guaranteed loans. At the same time, Federal dollars are at no greater risk than under the current BIA program because BIA will retain the right to look to the servicing lender to recover the losses that could have been avoided by proper pricing. Again, there is no additional cost to the Federal Government, and this puts the BIA program on the same level as the SBA and USDA program.

The bottomline is that S. 2017 offers an opportunity for the private secondary market in commercial loans to work to increase capital for development of economic enterprise in Indian Country just as the secondary market in SBA guaranteed loans has increased the capital available to small businesses throughout the United States. We urge this committee to support this bill.

Thank you very much for this opportunity. I am willing to answer any questions.

[Prepared statement of Mr. McGuire appears in appendix.]

Senator CAMPBELL. Thank you.

I have visited the tribes in your area—once at the invitation of Congresswoman Bono, in fact. And I have to tell you, I was really impressed with the tribes, including Cabazon, one of the tribes I visited down there, not only at their business acumen, but the ability to work with county and city government, too. There are a number of cooperative things that are going on down there I thought were just an absolute model of how Indians and non-Indians could work together and get along and do something that was of benefit to the whole community. And so I often use the tribes in your area as tribes who have really found a way to bridge that gap we were talking about with Ms. Edelman.

Let me ask you a couple of questions about loans and portfolios. How long does a BIA guaranteed loan typically remain in your portfolio?

Mr. MCGUIRE. At this point in time, they stay in the portfolio the entire life of the loan, which can be as long as 30 years.

Senator CAMPBELL. And what are the typical projects that they get loans for in your area? This is a big resort area.

Mr. MCGUIRE. This is a resort area—a tire recycling plant, and actually we do loans across the Nation for BIA programs, but in this case, a tire recycling plant. We are taking a look at a printing-type office, a truck stop/convenience store area for one of the tribes in a new area that has got a highway. We are looking at a strip center for one of the tribes also.

Senator CAMPBELL. Well, you obviously have found a way to work well with the tribes, if you are doing this across the country. Have you had any bad experiences?

Mr. MCGUIRE. I would say that we have probably loaned over \$100 million to tribes across the Nation, and we virtually, with one

small exception, have had nothing but very good experiences with those loans.

Senator CAMPBELL. I understand the loan default rate at the BIA program is between 6 and 7 percent. How does that compare with an industry lending, say, in commercial or home mortgages?

Mr. MCGUIRE. I would say that is on the high side.

Senator CAMPBELL. It is on the high side?

Mr. MCGUIRE. That is on the high side.

Senator CAMPBELL. I was going to ask Ms. Edelman this, but maybe she could chime in if she is interested, too.

One of the problems is that banks may not be exposed to a whole variety of opportunities in Indian communities. That is a communication problem we have. Do you think the lending agencies, and in fact do you think NCAI or Indian country would support, for the lack of a better term, something along the lines of a joint development fund which would help tribes, the private sector and the banking community identify the opportunities that each offers and each needs?

Mr. MCGUIRE. From a banking standpoint, absolutely. I think we would encourage that as much as possible.

Ms. EDELMAN. I can say so on behalf of NCAI, certainly.

Senator CAMPBELL. Basically, you are trying to do that now just to, as you can, with different seminars.

Ms. EDELMAN. Exactly.

Senator CAMPBELL. Mr. McGuire, the amount of loans, the lending projects you have mentioned, your testimony involves pretty substantial loans—\$7.5 million to \$18 million respectively.

Mr. MCGUIRE. Correct.

Senator CAMPBELL. Are those typical of the kind you get involved with, from the standpoint of loan amount?

Mr. MCGUIRE. No; those are definitely on the higher side. Usually, these loans are capped at around \$4.5 million to \$5 million, although there are exceptions. And the ones that we are looking at right now are in the \$1 million to \$3.5 million range, but we are also looking at a couple of them that are in the \$10 million range.

Senator CAMPBELL. So you loan to tribes. Do you also loan to individual tribal members?

Mr. MCGUIRE. Yes; we do. We have done many individual loans over the last 15–18 years.

Senator CAMPBELL. What do they need, when they come to you for a loan, a tribal member, do they need a plan? They have to have an idea and have it pretty well fleshed out about what they would like to do? You do some feasibility analysis of it to see if it will work.

Mr. MCGUIRE. Absolutely. When they come to us for these types of loans, from an individual standpoint, we have made car loans, home improvements loans—just our normal loans across the board. As far as loans for economic development, those we have only done with tribes. But absolutely, they knew that they needed a plan. Absolutely, they do have to have a plan, or we can assist them with trying to put a plan together.

Senator CAMPBELL. You do assist them. They have a good idea; you have somebody on staff that you can help lay out the financial business plan.

Mr. MCGUIRE. We do, or we bring somebody else into the picture that is an expertise that can help them formulate this plan so that it becomes an acceptable loan program for both us and the BIA, because we look like we are protecting the BIA to some extent, because we are in there as partners with them and we do not want to have a default if it is at all possible.

Senator CAMPBELL. Good. Some of the things you mentioned that you have loaned money for—one you mentioned was a strip center. Does that mean mall, hopefully? [Laughter.]

Mr. MCGUIRE. Yes; that is a small mall with various stores along the road.

Senator CAMPBELL. Okay. All right. Well, I appreciate that. I have no further questions, and let me sigh with relief there with that answer.

Mr. MCGUIRE. Thank you very much. [Laughter.]

Senator CAMPBELL. With that, this hearing, the record will stay open for 2 weeks. If anybody has anything they would like to add in writing, just send that into the committee. We will include that in the record, too.

This committee is adjourned. Thank you.

[Whereupon at 10:48 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Thank you, Mr. Chairman. Throughout my time in Congress, I've heard tribal leaders in my State describe their frustration with the economic conditions on the Wind River Reservation. Unemployment, poverty, and lack of infrastructure are serious problems throughout Indian country. It is important for this committee to remain interested and committed to addressing these issues.

As a former small business owner, I well understand the importance of creating incentives for small business development in Wyoming communities, particularly on the Wind River Reservation. My State's economic health is dependent on this kind of entrepreneurship. Creating opportunities to secure loans can go a long way toward helping small business, entrepreneurs, particularly those living in Native American communities.

I know, for example, that both the Northern Arapaho and Eastern Shoshone Housing Authorities have been able to establish a Department of Housing and Urban Development program that allows local banks to issue loans to eligible tribal members. Clearly, increased home ownership and adequate housing are an inherent part of enhancing and building solid communities as well as sustaining economic growth. These tribes are to be commended.

The Indian Financing Act of 1974 is a step in the right direction to help American Indians secure loans. However, since its creation over a quarter century ago—many of the same economic challenges remain. I am very interested to see how we can make this program more accessible to a larger population of Native Americans.

Thank you Mr. Chairman. I look forward to hearing from our witnesses.

PREPARED STATEMENT OF LES MINTHORN, TREASURER, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Mr. Chairman, my name is Les Minthorn and I am the treasurer of the Board of Trustees, the governing body of the Confederated Tribes of the Umatilla Indian Reservation [CTUIR]. It is a privilege and a pleasure for me to appear before the committee today to testify in favor of S. 2017, legislation that will permit more tribes and individual Indians to take advantage of the BIA guaranteed loan program, as the CTUIR did, to achieve financial independence.

The purpose of S. 2017 is to facilitate the sale of BIA guaranteed loans by the lending bank to the secondary market, along with transferring the guarantee of the United States to the purchaser of the loan. This will have the effect of permitting banks and other lending institutions participating in the BIA guaranteed loan program to make more such loans available to tribes and individual Indians. I will leave it to others with more experience in banking matters to address the mechanics of how S. 2017 facilitates the sale of such loans in the secondary market; I want to address the experience of the CTUIR with our BIA guaranteed loans as an indica-

tion of how the expansion of this loan program can benefit other tribes and individual Indians.

On July 18, 2001, Assistant Secretary Neal McCaleb testified before this Committee on tribal good governance practices as they relate to economic development. In the course of his testimony, Mr. McCaleb made the following statement about the CTUIR:

“Another success story is told by the Confederated Tribes of the Umatilla Indian Reservation located in rural northeast Oregon. Their original economy was based upon agricultural and natural resources, primarily fishing, grain, and timber.

Today the tribe has diversified into commercial developments such as a trailer court, a grain elevator, the Wildhorse Casino, a hotel, a RV park, a golf course, and a solid waste transfer station.

The tribe is now the second largest employer in Umatilla County, following only the State of Oregon. Their operating budget has increased from \$7.6 million to \$94.2 million in the last 9 years.”

We appreciate the recognition and kind words by Assistant Secretary McCaleb. Our government and our people have worked hard for the modest success we have achieved. The growth in our tribal budget in the past decade is due to two factors: First, the CTUIR has taken full advantage of the opportunity to contract for BIA and IHS programs under the Indian Self-Determination Act. Second, and much more importantly, the CTUIR has worked diligently to establish a diversified, self-sustaining Reservation economy. The BIA guaranteed loan program played a critical role in providing startup financing for three tribal enterprises that form the core of our economy.

Prior to 1994, the CTUIR budget was derived almost exclusively from Federal grants and contracts. Only a handful of jobs outside of tribal government were available for tribal members and other reservation residents. The CTUIR had little tribal income that it could allocate pursuant to tribal priorities and without the strings attached to Federal funds. We knew that governmental jobs and programs were not enough to increase employment opportunities and to improve the financial future for our tribe and its members. Economic development was necessary to achieve these goals.

The Umatilla Indian Reservation is bisected by Interstate 84—the major east/west highway from Portland to Boise. Because of our rural location, we knew our economy needed to take advantage of the freeway traffic. As far back as 1969, the CTUIR planned for the development of a destination resort at the base of the Blue Mountains offering a golf course, hotel, RV park, gas station and convenience store, and a tribal museum. Those plans languished for 25 years because the CTUIR was unable to secure the necessary financing. But recently, with the assistance of the BIA guaranteed loan program, our dreams have become reality.

In November 1994, our small, temporary gaming facility opened, and in March 1995, moved into our larger, permanent casino. To diversify our economic enterprises and to increase the amenities available to our casino patrons, we needed a hotel, RV park and golf course. Attracting financing for these enterprises posed a difficult challenge. The CTUIR had few resources and little income it could pledge to secure repayment for loans for these enterprises. The fact that the enterprises were to be located on trust lands and were to be constructed and operated by a tribe with no experience in such enterprise development or operation made our quest for financing especially difficult. In fact, we were only able to attract financing because of the BIA guaranteed loan program authorized under the Indian Finance Act of 1974.

Working with the agency and regional BIA offices, we received a \$10-million loan guarantee. Pursuant to the loan guarantee, the United States guaranteed 90 percent of the loan and provided an interest rate subsidy to the tribe to lower financing costs in the critical first 3 years of operations when our new enterprises were getting off the ground.

If any member of the committee believes that a tribe with a BIA loan guarantee has the ability to get a bank loan for any enterprise, regardless of its feasibility, and on sweetheart terms, I'm here to tell you your belief is mistaken. We worked with the First Security Bank of New Mexico on our loans and learned valuable lessons in the process leading to the negotiation and closing of the loan transactions. We conducted market feasibility studies for each financed enterprise, we were required to pledge the full faith credit of the CTUIR to secure repayment of the loans and had extensive negotiations on loan terms addressing the construction and management of the financed enterprises. In other words, while the BIA loan guarantee made bank financing available, it didn't guarantee that we would get the loan. We were spared none of the rigors that other commercial borrowers are subjected to,

which prepared the CTUIR for the realities of loan and bond transactions that followed.

While I was not a participant in these loan negotiations, present with me today is our tribal attorney, Dan Hester, who was. In addition, the attorney for the First Security Bank of New Mexico, Nancy Appleby, is also present at the hearing today. I'm certain that both Mr. Hester or Ms. Appleby could explain in excruciating detail the process and terms associated with the loans if the Committee has any interest in exploring these issues further.

The CTUIR BIA guaranteed loans closed in May [Hotel Loan] and December [Golf Course and RV Park Loan] of 1995. All three enterprises opened in 1996 and 1997. Later, the CTUIR financed and developed our tribal museum and educational facility, known as the Tamastlikt Cultural Institute, and have acquired and renovated the Arrowhead Truck Stop/Gas Station/Convenience Store to add to the enterprises and amenities of the Wildhorse Resort and to diversify our economic base and employment opportunities. Currently, the Wildhorse Resort, TCI and Arrowhead employ about 500 persons. Unemployment rates among CTUIR and other enrolled tribal members residing on the Umatilla Indian Reservation have been dramatically reduced—from 37 percent to 17 percent—since Wildhorse Resort opened. Many tribal members who had gone away to be educated and stayed away to pursue employment opportunities that did not exist at home have returned to their reservation homeland and to unprecedented job opportunities and salaries.

Even before the introduction of S. 2017, the CTUIR did its part to free-up BIA guaranteed loan resources. Taking advantage of our increased financial resources, our operating history of Wildhorse Resort enterprises, and an improved interest rate environment, the CTUIR issued taxable and tax-exempt bonds in 1999 to refinance the BIA guaranteed loans and other tribal commercial loans. But I hasten to add that the loan guarantees were absolutely essential for the initial development of our projects. Bonds are difficult to obtain for projects that are just on the drawing board, and for which no operating history exists. It was loans, secured with the guaranteed backing of our trustee, that provided the critical initial financing for the Wildhorse projects that are a reality today.

The experience of the CTUIR with the BIA guaranteed loan program is a real success story. The BIA guaranteed loan program made loans available to our tribe that would not have been available without the guarantee of the United States. The CTUIR has seen its economic base expand to meet the needs of its people and to acquire the resources and expertise to explore other economic development and financing opportunities as our capability and resources permit. We have used this expertise in our pursuit of other economic development projects such as our proposed Wanapa natural gas-fired power plant, the expansion of our casino which is now nearly complete, the development of a reservation grocery store and the development and financing of housing to meet the needs of our growing and employed tribal membership.

This committee has been a staunch and persistent proponent of Indian tribal self-determination. The Indian Self-Determination Act of 1975, and its more recent amendments, have taken huge strides in that direction. However, tribes will not be fully self-sufficient and in control of their own destiny without economic development to employ their members and to provide tribal income to fund tribal programs. The BIA guaranteed loan program is an important tool available to tribes to develop their reservation economies for these purposes. The experience of the CTUIR under the BIA guaranteed loan program is an indicator of the critical role such loans can play. It is based on this experience that the CTUIR offers its strongest support for S. 2017 so that an increase in the availability of BIA guaranteed loans can have the beneficial impact on other Indian reservations as it has had on my reservation.

Once again, Mr. Chairman, I very much appreciate the opportunity to testify before the committee on this important bill. I would be pleased to answer any questions that you or members of the committee may have of me.

PREPARED STATEMENT OF MARCIA WARREN EDELMAN, ECONOMIC DEVELOPMENT
CONSULTANT, NATIONAL CONGRESS OF AMERICAN INDIANS,

Chairman Inouye, Vice Chairman Campbell, and other members of the committee, I would like to thank you for your invitation to present testimony on this very important piece of legislation, The Indian Financing Act Amendments of 2002. I would also like to thank the committee and their staff for the hard work they do in the interest of the tribes and the Indian people of this Nation. We appreciate the particular attention that the committee has given to the need for sustainable economic

development in Indian country. S. 2017 represents an important element in this effort.

As you well know, access to capital in Indian country is extremely limited, and this shortage of capital represents one of the primary barriers to comprehensive and lasting economic development in our communities. But despite these challenges, a growing number of Indian-run and/or tribally operated businesses in the United States have taken hold in recent years. Most of these Indian entrepreneurs and tribes must seek loans for the development of their businesses, as they do not have the financial means to finance a business themselves.

But despite an increasing demand for loans, the lending community in Indian country is not vibrant. Sources of capital for development remain extremely limited as lenders—already tentative in their approach to Indian country due to jurisdictional complexities and, in many cases, a simple fear of the unknown—shy away from sinking large amounts of money into projects that will take a number of years for repayment. Such long-term loans tie up capital for lenders, limiting their ability to make loans to other applicants. Large loans for complex proposals—however important they may be to the enhancement of infrastructure and meaningful economic opportunity in Indian country—are extremely difficult to procure.

I commend the committee and its leadership for recognizing this problem and introducing legislation designed to draw lenders into the economies of Indian country. This legislation offers an excellent opportunity to boost tribes' and their members' ability to realize self-sufficiency by addressing the problems of liquidity in the current market of guaranteed loans to Indian borrowers.

As you have found, the vast majority of lenders have not readily accepted the existing loan guarantees made available through the Secretary of the Interior, likely because lenders are committed to having their capital tied up until repayment begins. Outside of Indian country, loan markets operate differently and arguably more productively. Agencies like Freddie Mac and Fannie Mae—as secondary lenders—expedite the capital-refill process by purchasing the loans from the primary lenders. This secondary market does not affect the borrower, and allows a quick turnaround for the primary lender. In essence, the secondary lender fronts the value of the loan, and gives the primary lender more funds for outlay in other loans.

We believe that the creation of a similar secondary market for Indian country lending is a promising means to increase opportunities for Indian businesses to acquire capital, thereby strengthening the overall economic fabric of Indian communities. The key foundation of a vibrant economy is small business, particularly in the small, rural communities that are generally representative of Indian country: By making the loans that are currently guaranteed by the Department of the Interior available for transfer, this legislation stands to greatly increase the flow of funds into new business in Indian communities, and jumpstart increasing economic self-sufficiency in Indian country.

Secondary markets have proven to be an extremely successful means of stimulating lending in the contexts where they currently operate. For the last 17 years, the Small Business Administration has operated a secondary loan market for its loans, and the results have been quite positive. The program provides lenders who might otherwise have been unable to participate in the loan market a simple process to follow for the transfer of loans. Increased numbers of lenders in the market have in turn resulted in an increase in the amount of money available to those businesses seeking loans.

Using the SBA program as a model, this legislation would open up Department of Interior guaranteed loans to the same processes. We know that the market can work to benefit Indian country when the barriers that plague our economies are removed, and this process, under the supervision and administration of a fiscal transfer agent, is a relatively simple and straightforward way to address one of the barriers we face. Additionally, the program operates at a very low cost to the Government, with fees for the transfer paid by the lenders who execute the transfer. Best of all, this program has only positive effects on the individuals seeking the loan: They have no need to worry about the transfer process, and benefit by the availability of more capital.

The legislation as currently drafted contains provisions for the Secretary of the Interior to promulgate regulations necessary to set up the secondary loan market, to contract with a fiscal transfer agent to carry out the registration and paying agent functions, and to issue acknowledgements of loan transfers. In implementing this requirement, we urge the Secretary to work very closely with tribal government representatives to develop final regulations to set up the market. We also urge the Secretary to contract with a fiscal agent familiar with transactions in Indian country. We are always available to work with this Committee and the Secretary to ad-

vise this process and contribute what we can to our mutual goal of helping Indian communities and individuals to thrive.

The National Congress of American Indians supports S. 2017 as an important means to inject capital into the economies of our tribes, thereby strengthening Indian economies and Indian communities. By approving this bill, the Senators on this committee will make another important step on the path to meaningful economic development for Indian country, with little impact on either Government spending or bureaucratic process.

Thank you for this opportunity to present testimony on behalf of NCAI, and I welcome any questions you may have.

PREPARED STATEMENT OF KEVIN MCGUIRE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, PALM DESERT NATIONAL BANK, PALM DESERT, CA

My name is Kevin McGuire. I am the chairman and chief executive officer of Palm Desert National Bank in Palm Desert, CA.

Palm Desert National Bank began making loans to Indian tribes and tribal entities in 1985. The projects with which we have been involved include a tire re-cycling plant for the Cabazon Band of Mission Indians for \$7.5 million and most recently we were the lender for a \$18 million refinancing and construction project for the Picuris Pueblo in New Mexico. We continue to actively seek opportunities to make loans of all sizes for economic enterprise development in Indian country throughout the United States.

As an Indian country lender, we have learned that, while many economic development efforts in Indian country can be sparked with relatively small amounts of capital, many tribal development efforts require capital in the form of cash and loans that exceed the lending limits and loan concentration limits to which small- and mid-sized community banks are subject. Our experiences as a community bank lead us to conclude that the creation of a secondary market in BIA guaranteed loans will increase opportunities for lending in Indian country without significant additional cost to the parties and with no additional cost to the Federal Government.

An institutionalized secondary market for BIA-guaranteed loans will facilitate the sale to investors of BIA guaranteed loans, putting capital back into the originating bank that then can be loaned again. Additionally, lenders will be able to originate more loans without violating laws and regulations that limit the amount that banks may lend to a particular borrower (a function of the bank's size) and that prohibit banks from having in their portfolios too many loans of a single type.

If only large banks invested in Indian country, lending limits and loan concentrations would be less of an issue. However, community banks—those most familiar with their Native American neighbors—make many of the loans earmarked for tribal economic development. Therefore, the constraints imposed banking law lending limits and loan concentration limits are significant problems—problems that can be resolved by the passage of S. 2017.

Since the current Indian Financing Act BIA guaranteed loan program permits lenders to transfer portions or all of BIA guaranteed loans that they originate, why creation of: A secondary market is necessary? There are two primary reasons.

First, finding participants willing to purchase loans to tribes or tribal enterprises, whether or not they are guaranteed by BIA, is very difficult and time-consuming. This is so because few lenders are familiar with the Indian Financing Act program or the benefits of lending in Indian country. As a result, closings are delayed and costs escalate. We believe that the existence of an institutionalized secondary market will make selling tribal loans much easier.

Second, there is already a secondary market for commercial loans (for example, the SBA, USDA and FARMER MAC programs). Investors are familiar with, and are comfortable purchasing loans from, the existing programs. However, as it now exists, the Indian Financing Act guaranteed loan program is structured differently than other Government guaranteed loan programs. The differences and lack of familiarity make investors unwilling to invest in BIA guaranteed loans.

The secondary market contemplated by S. 2017 is modeled after the existing SBA and USDA programs. The basic structure is the same. The risk to investors is the same. Hence, investors who purchase loans from other government guaranteed programs will be likely also to purchase BIA guaranteed loans. At the same time, Federal dollars are at no greater risk than under the current BIA program because BIA will retain the right to look to the servicing lender to recover any losses that could have been avoided by proper servicing. Additionally, like in other programs, the fees of a fiscal transfer agent will be paid by the lender or the borrower, not the government.

The bottomline, then, is that S. 2017 offers an opportunity for the private secondary market in commercial loans to work to increase capital for development of economic enterprise in Indian country, just as the secondary market in SBA guaranteed loans has increased the capital available to small businesses throughout the United States. We urge this committee to support this important bill.

Thank you very much for the opportunity to address this committee and for your favorable consideration of S. 2017.

An Introduction to Kevin McGuire

Kevin McGuire has served as the chairman and chief executive officer of Palm Desert National Bank since 1989, a position he came to after 14 years in commercial banking. In addition to heading the management team at Palm Desert National Bank, Mr. McGuire is an active community leader and serves on the Boards of Directors of a number of community and charitable organizations.

Palm Desert National Bank is a locally owned and operated independent bank in Palm Desert, California. Its assets exceed \$175 million. The bank has been operation in California since 1981. Palm Desert National Bank is an active corporate citizen in its community and supports a number of local charities. Palm Desert National Bank has taken an active lead role in financing economic development projects in Indian County, and it is through Mr. McGuire's efforts that S. 2017 is now before the Senate Committee on Indian Affairs.

**COALITION FOR INDIAN HOUSING
AND DEVELOPMENT**



March 26, 2002

The Honorable Ben Nighthorse Campbell
Vice Chair
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Dear Senator Campbell:

On behalf of the Board of Directors and membership of the Coalition for Indian Housing and Development and the National American Indian Housing Council, I am writing in support of the Indian Financing Act Amendments of 2002, S. 2017. I commend you for introducing a bill that addresses barriers to investment in Indian communities, a great concern for our members and all of Indian Country.

S. 2017 seeks to reduce regulations and guarantee loan investments for Wall Street. We believe this legislation is vital in helping to create jobs, stimulate the economy and spur investment in capital among small businesses on and near reservations, without cost to the government, at a time when the need could not be greater.

Currently, banks have difficulty selling their existing Native American small business loans, since the U.S. government does not guarantee them. As a result, Wall Street investors who typically buy loans from financial institutions find that the current Native American small business loans are a poor investment. The Indian Financing Act Amendments of 2002 would provide incentives for secondary market investors to purchase these loans by pledging the full faith and credit of the U.S. government on each loan sold.

A similar guarantee in the housing arena through the FHA has helped create a continuing flow of funding for moderate-income homebuyers at any stage of the economic cycle, due to that government guarantee. Your legislation would do the same for tribes and improve their chances to start new businesses and create jobs.

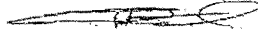
At this time in history, tribes are beginning to see the possibilities for economic development with more and more tribes involved in launching businesses. This legislation

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comes at an important time to "catch the wave" of revitalization beginning in Indian country. These improvements can harness the change by providing adequate capital that has been heretofore lacking on a consistent basis. As you are aware, jobs and economic opportunity are predominant challenges facing tribes today. The unemployment rate is as high as 85 percent on some reservations, and 50 percent is quite common.

Our individual members are likely to support your legislation and benefit from it because of the great need for business loans and stimulants to their economics. As a national organization we stand behind you in this effort. We thank you for your continued ideas and support of Indian country and look forward to your successful passage of this legislation.

Sincerely,



Chester Carl
Chairman



April 19, 2002

Hon. Daniel Inouye, Chairman
 Hon. Ben Nighthorse Campbell, Ranking Minority Member
 Senate Select Committee on Indian Affairs
 485 Russell Senate Office Building
 Washington DC 20510

Dear Chairman Inouye and Senator Campbell:

Your sponsorship of S 2017 is an important step in promoting entrepreneurship and flow of capital to Indian country. Our bank has limited experience with BIA guaranteed loans. However, based on our very positive experience with the SBA guaranteed loans and the secondary market for those guarantees, we believe that formal establishment of a secondary market will significantly improve the BIA loan program for borrowers, lenders, investors and the BIA.

For the borrower

Government loan guaranty programs, such as the SBA program and the BIA programs under the Indian Financing Act, are clearly targeted at borrowers who have difficulty obtaining "credit elsewhere." The Congress has recognized that for a variety of reasons, mostly unjustified, a lender may not favorably evaluate the loan application of a potential small business or Native American borrower.

But the existence of a Federal guaranty for part of the loan is not itself an adequate incentive for many lenders, and consequently many borrowers may have difficulty locating lenders who are comfortable working with Federal loan guaranty programs. A secondary market for guaranteed loans is, however, a proven incentive in getting lenders involved with Federal loan programs. And the more lenders who are involved, the more opportunity there will be for a potential borrower to structure a loan using the Federal guaranty with terms to fit his or her needs. Quite simply, a secondary market incentivizes more lenders to make more loans within a guaranty program, and this helps borrowers.

Additionally, unlike in the residential mortgage situation, a secondary market in government loan guaranties can be structured to ensure the borrower continues to repay its initial lender, and is unaffected by any transfer of the loans. This is the approach of the SBA secondary market, and to our knowledge there have been no borrower complaints.

For the lender

Banks make money over time, as borrowers repay loans. But in today's world, business decisions and earnings are recalculated quarterly, if not more often. A lender may be very experienced making a certain kind of loan, but unless that experience can be reused frequently by the bank there are few incentives to develop the expertise. Large banks often hold many of their



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loans in their own portfolios, ready to refinance or provide additional financial services to a borrower. Many smaller banks need to replenish their supply of lendable funds, and cannot hold all loans to term. This replenishment of lendable funds is accomplished through packaging and selling loans to investors, in a secondary market. This procedure is what has allowed our nation's residential mortgage market to grow, and it is a procedure increasingly looked to in small business lending.

Because the government guaranty of a BIA or SBA loan is an unconditional promise to pay in certain circumstances, government guaranteed loans are potentially attractive to investors. However, a sophisticated investor is most comfortable with a standardized loan package, coming from or at least through a trusted source. If a structure exists to facilitate that process, then a lender may quickly and efficiently obtain liquidity to make more loans through secondary market transfers. If the process is unpredictable and record keeping unclear or non-standard, banks may be rejected by investors, or banks may fear selling to investors with an unknown track record.

An organized secondary market standardizes the transfer and payment process, while leaving the bank and investor free to set the appropriate investment price and terms. An FTA as the agent for payment and transfer eliminates the need for a lender to keep track of subsequent transfers of the loan. Its obligation remains appropriately focused on servicing its borrower.

For the secondary market investor

A secondary market investor may be an individual, or a giant pension fund. But whatever the investor, its interest is in a loan which it can evaluate and compare to other loans. Secondary market standardization enhances investor interest. The secondary market fiscal transfer agent also relieves the investor of the need to track the borrower and service the loan. In turn the secondary market investor provides the liquidity to the original lender that is necessary to keep loan funds flowing to new borrowers.

For the Federal agency

A federal agency uses its guaranty to meet a credit need as defined by the Congress. Getting lenders, especially smaller banks, interested in working with a government program can be a challenge. If a small bank knows it can transfer the guaranty to a proper investor, receive funds for the loan, and continue to service its borrower, it will have a greater incentive to use the Federal guaranty. The agency will have a major new advantage in recruiting lenders to participate in the program. And agency staff will not have to spend time keeping track of loan transfers. That will be the job of the secondary market fiscal transfer agent (FTA). The agency can concentrate on working with borrowers and lenders to efficiently administer and make more effective its programs.

Whether an agency is guarantying 200 or 20,000 loans, it is a complicated process, with complicated records and data to keep track of. The secondary market can also become the vehicle to establish and upgrade MIS and other data necessary to an agency, without imposing any greater burden on borrowers or lenders.

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Our experience with the secondary market

Because of our very favorable experience with the SBA secondary market, we are strong advocates of that approach. We are active in the Bond Market Association Committee on Secondary Markets, to ensure that government and private standards for these programs are effective for borrowers, lenders and investors. We believe that enactment of S 2017 will allow the same improvements and program growth at BIA as SBA has experienced in its 7(a) program. We would be happy to provide additional information, and look forward to using such a BIA program with our community of borrowers and investors.

Sincerely,


William H. McGaughey
Senior Vice President